

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OKLAHOMA
TRIAL RULES FOR JUDGE TERENCE C. KERN

Professionalism, courtesy, decorum, and common sense shall dictate all behavior in this Court. The parties and attorneys will be held to the highest standard of professional conduct, personal and professional courtesy, and deportment throughout all proceedings conducted in this Court.

1. You are expected to be familiar with Local General Rule 3, concerning courtroom behavior, and adhere strictly to each of the requirements of this rule.
2. **General Courtroom Protocol:**
 - Do not leave the courtroom while trial is in progress without obtaining leave of Court.
 - Attorneys should not directly address opposing counsel in open court without leave of Court.
 - Computers may be used by counsel, as long as such use is unobtrusive and is cleared through the courtroom deputy prior to the morning of trial.
 - Do not place on the courtroom furniture, including chairs, conference tables, or benches, any objects which might scratch or mar the surfaces, including briefcases with metal closures or feet, demonstrative aids, exhibits, etc.
3. **Prior to Trial:**

If you have reason to anticipate that any question of law or evidence is particularly difficult, give the Court as much advance notice as possible.
4. **Voir Dire:**

In the event supplemental voir dire examination by counsel has been approved by the Court prior to trial, the following rules will apply:

 - Voir dire examination must be conducted in such a fashion as to gain knowledge which will aid in making an informed challenge.
 - Voir dire examination may not be conducted in a manner designed to inform the jury of the anticipated evidence or the applicable law, nor to provide the type of information which is normally included in the opening statement.
 - A statement disguised as a question will not be permitted.
 - Counsel may not ask a question based on a hypothetical statement of the facts or the law.
 - Voir dire may not be used to explain the burden of proof.
 - Do not attempt to elicit promises or assurances of any kind from jurors nor ask them to give any indication of what their verdict would be based on certain conditions or assumptions.
 - Each side is limited to 10-15 minutes unless additional time is approved by the Court prior to trial.

5. Opening Statements:

Unless the case is unusually complex, each party will be limited to 15-20 minutes. In multiple party cases, time for statements may be substantially reduced. Any additional time is subject to prior approval of the Court. Opening statement is to be used to outline the proposed evidence, not for argument.

6. Exhibits:

- Court time may not be used for marking exhibits. This must be done in advance of the court session.
- Counsel are required to prepare separate exhibit notebooks for: (1) the witness stand; (2) opposing counsel; (3) the Court; and (4) the Court's law clerk. In cases requiring voluminous exhibits, counsel should prepare an exhibit notebook tailored to each witness, or group of witnesses if the group is to give testimony in common. The purpose of this requirement is the elimination of repeated trips by counsel to the witness stand.
- To the extent possible, the Court requests the parties attempt to agree on a set of exhibits for use during trial in order to eliminate duplicate copies of nonobjectionable exhibits. Any exhibits that a party wishes to introduce, but that are objected to, should be included in a separate set of "Plaintiff's" or "Defendant's" exhibits.
- Advise opposing counsel of the exhibits to be used in advance of the day's court session. Any joint exhibits should be offered and received in evidence without the necessity of formal identification. If you intend to question a witness about a group of exhibits, avoid delay by having the witness notebook already on the witness stand.

7. Witnesses:

- Witnesses should be readily available to avoid needless delay, including videotape depositions.
- Please stand when you address the Court or interrogate witnesses. (An exception is made for physical infirmity.) Use the lectern unless your comment is to be brief.
- Examination of a witness will include direct examination, cross examination, one re-direct examination, and one re-cross examination except in exceptional circumstances.
- Attorneys will not interrupt each other or a witness except to assert an objection, and the attorneys will never interrupt the Court for any reason.
- Do not greet or introduce yourself to adverse witnesses. Commence your cross-examination without preliminaries. Do not face or otherwise appear to address yourself to jurors when questioning a witness.
- Except for children, address witnesses by their surnames, for example, Mr. A, Sergeant B, or Doctor C.
- Never assert your personal opinion as to the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused. Never assert personal knowledge of a fact in issue or assert a fact not in evidence.

- Do not react to a statement by another counsel or a witness being examined by another counsel by any gesture or facial expression signifying agreement, disagreement, approval, or disapproval. Advise your clients they are subject to this same limitation.
- Where more than one attorney represents a party, only the attorney handling the particular witness may respond to an objection or raise an objection in regard to his/her testimony. Likewise, only one opposing attorney should make or argue motions or other objections as to that witness.

8. Jury Protocol:

- Stand a respectful distance from the jury at all times. Statements and arguments to the jury will be made from the lectern.
- When you object in the presence of the jury, make your objection short and to the point. Do not argue the objection in the presence of the jury, and do not argue with the ruling of the Court in the presence of the jury. Do not make motions (e.g., motion for mistrial) in the presence of the jury. Bench conferences should be kept to a minimum.
- Except in ruling on an objection, the Court will not, in the presence of the jury, declare that a witness is qualified as an expert or qualified to render an expert opinion, and counsel should not ask the Court to do so.

9. Deposition Designations and Counter-Designations:

- Deposition designations and counter-designations for use at trial shall be filed in pleading form in accordance with the Scheduling Order.
- A party may use any testimony which has been designated or cross-designated by any other party. At trial, except for good cause shown, the "reader" of the testimony of a single witness shall remain the same, and counsel shall read the direct examination questions (both designated and counter-designated) and the cross-examination questions (both designated and counter-designated), respectively.
- If the parties are unable to resolve objections to deposition testimony, the outstanding objections, together with the depositions themselves, should be provided to the Court in accordance with the Scheduling Order. Objections should be in pleading form by deposition, page, line, and the basis for objection.

10. Motions in limine:

Motions in limine shall be filed in accordance with the Scheduling Order.

11. Videotaped Testimony:

- Edited by subject matter:
 - The Court will permit the parties to edit and present videotaped testimony organized by subject matter if it will assist the jury to understand the evidence or determine a fact in issue.
 - The testimony of a single witness, or of multiple witnesses, relating to designated subject matter may be combined into a single presentation.

- Advance ruling:
- Objections to, and rulings on, admissibility of videotaped testimony should be made sufficiently in advance of its presentation to the jury to permit it to be edited to reflect the Court's rulings.

12. Juror Notebooks: Juror notebooks are rarely used by the Court given the existence of evidence presentation technology in the courtroom. However, in cases of appropriate complexity, the Court will permit the parties to distribute to each juror identical notebooks., which may include copies of:

- The Court's preliminary instructions;
- Selected exhibits that have been ruled admissible or that the parties agree will be admitted without objection (or excerpts thereof);
- Stipulations of the parties;
- With agreement of the counsel, other material not subject to genuine dispute, which may include:
 - Photographs of parties, witnesses or exhibits.
 - Curricula vitae of experts;
 - Agreed upon glossaries, chronologies, or time lines;
 - Blank paper for the jurors' use in taking notes.
- If counsel believe that juror notebooks are necessary in a case, they should raise this issue at the Pretrial Conference and are required to confer on the contents of the notebooks prior to commencement of the trial. Any arguments or disagreements should immediately be brought to the attention of the Court.
- During the course of the trial, the Court may permit the parties to supplement the materials contained in the notebooks with additional documents as they become relevant and after they have been ruled admissible or otherwise approved by the Court for inclusion.

REVISION HISTORY

<u>Date:</u>	<u>Description:</u>